FILE COPY

PETITION NOT PRINTED

Office Supreme Court, U.S.
FILED
DEC 15 1960
JAMES R. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 161

ARTHUR CULOMBE,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

RESPONDENT'S BRIEF

JOHN D. LABELLE,
State's Attorney
for Hartford County
Hartford, Connecticut

J. READ MURPHY
Assistant State's Attorney

GEORGE D. STOUGHTON
Assistant State's Attorney

INDEX

RESPONDENT'S BRIEF

Citations and Authorities ..... ii, iii iv,

Opinion Below 1

Jurisdiction 1

Constitution and Statutory provisions 1

Questions presented 2

Statement of the Case 2

Summary of Argument 21

Argument 22

Conclusion 44

Appendix A-1

CITATIONS

Ashcraft v. Tennessee, 322 U.S. 143; 88 L. ed. 1192; 64 S. Ct. 921 (1943) 22, 27

Cicenia v. LaGay, 357 U.S. 504; 2 L. ed. 2d 1523; 78 S. Ct. 1297 (1958) 23, 30, 33, 38

Crooker v. California, 357 U.S. 433; 2 L. ed. 2d 1448; 78 S. Ct. 1287 (1958) 31, 33, 34, 38

DeMaurez v. Swope, 104 F. 2d 758 (1939) 31

Fikes v. Alabama, 352 U.S. 191; 1 L. ed. 2d 246; 77 S. Ct. 281 (1957) 27

Gallegos v. Nebraska, 342 U.S. 55; 96 L. ed. 86; 72 S. Ct. 141 (1951) 27, 38

Haley v. Ohio, 332 U.S. 596; 92 L. ed. 224; 68 S. Ct. 302 (1948) 36, 38

Harley v. U.S., 242 F 2d 27 (C.A.D.C. 1957) 32

Hoag v. New Jersey, 356 U.S. 464; 2 L. ed. 2d 913; 78 S. Ct. 829 (1958) 33

Johnson v. Zerbst, 304 U.S. 458; 82 L. ed. 1461; 58 S. Ct. 1019 (1938) 32

Lisenba v. California, 314 U. S. 219; 86 L. ed. 166; 62 S. Ct. 280 (1941) 29

Lyons v. Oklahoma, 322 U.S. 596; 88 L. ed. 1481; 64 S. Ct. 1208 (1943) 22, 27

Martin v. U.S., 182 F. 2d 225 (1950) 31

Powell v. Alabama, 287 U.S. 45; 77 L. ed. 158; 53 S. Ct. 55 (1932) 31, 32

Spano v. New York, 360 U.S. 315; 3 L. ed. 2d 1265; 79 S. Ct. 1202 (1959) 31, 35

State v. Bunk, 4 N.J. 461; 73 A. 2d 249 (1950) 33

State v. Buteau, 136 Conn. 113; 68 A. 2d 681 (1949) 28

State v. Cross, 72 Conn. 722; 46 A. 148 (1900) 39

State v. Guastamachio, 137 Conn. 179; 75 A. 2d 429 (1950) 28

State v. Rogers, 143 Conn. 167; 120 A. 2d 409 (1956 ..... 28, 33

State v. Willis, 71 Conn. 293; 41 A. 820 (1898) 39

State v. Zukauskas, 132 Conn. 450; 45 A. 2d 289 (1945) 28

Stein v. New York, 346 U.S. 156; 97 L. ed. 1522; 73 S. Ct. 1077 (1953) 42

Torrence v. Looney 233 F. 2d 715 (C. A. 10, 1956) 32

U.S. v. Mitchell, 137 F. 2d 1006 (C. A. 2, 1943) 32

U.S. ex rel. Mitchell v. Thompson, 56 Fed. Supp. 683 (D. C. S. C. N.Y. 1944) 32

Voight v. Webb, 47 Fed. Supp. 743 (1942) 32

Watts v. Indiana, 338 U.S. 49; 93 L. ed. 1801; 69 S. Ct. 1347 (1949) 23

AUTHORITIES

3 Wigmore on Evidence	22, 39
Meltzer, Involuntary Confessions, 21 Un. Chic. L. Rev. 317	22
U.S. Const. Amend. VI	28
Conn. Const. Art. 1, Sec. 9	28
146 A. L. R. 369; 42 Col. L. R. 271	31
3 A. L. R. 2nd 1003, 1032	33
28 U. S. C. Sec. 1257 (3)	1

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 161

ARTHUR CULOMBE,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF FOR RESPONDENT

Opinion Below

The opinion of the Supreme Court of Errors is reported at 147 Conn. 194; 158 A. 2d 239 and appears in Vol. IV, Transcript of Record, p. 55 ff.

Jurisdiction

The judgment of the Supreme Court of Errors of Connecticut was entered on February 16, 1960. The petition for a writ of certiorari was filed May 12, 1960, and certiorari was granted June 20, 1960. The jurisdiction of this court rests on 28 U.S.C. Sec. 1257(3).

Constitutional and Statutory Provisions Involved

The Constitutional provision involved is the Fourteenth Amendment.

The Statutes involved are:

Connecticut General Statutes, 1955 Supp., Sec. 195d, now General Statutes, Sec. 6-49 (1958), *infra*, Appendix A, p. 1

Connecticut General Statutes, Sec. 8796 (1949), now General Statutes, Sec. 54-80 (1958), *infra*, Appendix A, p. 1

Connecticut General Statutes, Sec. 3615 (1949), now General Statutes, Sec. 54-81 (1958), *infra*, Appendix A, p. 2

Connecticut General Statutes, Sec. 8350 (1949), now General Statutes, Sec. 53-9 (1958), *infra*, Appendix A, p. 2

Connecticut General Statutes, Sec. 8351 (1949) as amended (1951), Sec. 3266d; 1957, Public Act 461, Sec. 3, now General Statutes, Sec. 53-10 (1958), *infra*, Appendix A, p. 3

Connecticut General Statutes, Sec. 8747 (1949), now General Statutes, Sec. 54-45 (1958), *infra*, Appendix A, p. 3

Questions Presented

Did the Supreme Court of Errors of Connecticut err in sustaining the trial court's finding that three confessions of the petitioner were voluntary and the facts and circumstances in connection with the confessions were not such as would make them inadmissible under the Fourteenth Amendment?

Did the Supreme Court of Errors of Connecticut err in holding that, after an accused has counsel and been advised by him, police may take a voluntary, unsolicited, gratuitous confession without first notifying his counsel?

Statement Of The Case

(The parenthetical numbers prefaced by the letter "T" refer to the pages of the Transcript of Record, Vols. I-IV.)

During the months of December 1956 and January 1957, in and around Hartford, there had been a number of robberies and atrocious holdup killings. Most of these crimes followed a similar pattern (T. Vol. IV, Finding, p. 39, par. 1).

Two of these killings occurred on December 15, 1956, in New Britain. The petitioner Arthur Culombe and his accomplice Joseph L. Taborsky were indicted for first degree felony murder, tried jointly and convicted by a jury. Both were sentenced to death.

The facts in connection with these New Britain murders are set forth in the finding of the trial court (T. Vol. IV, p. 15 et seq.) and in the opinion of the Supreme Court of Errors, the court below (T. Vol. IV, p. 58).

They may be summarized as follows:

About 6:00 o'clock on the afternoon of Saturday, December 15, 1956, Arthur Culombe, the petitioner, with Joseph L. Taborsky, both armed, drove from Hartford to New Britain intent on holding up a gas station. It was raining, freezing and sleeting. They drove to Kurp's Gas Station located on Stanley Street in New Britain. Edward Kurpiewski, the proprietor of the service station, serviced their car. During this time Taborsky announced that he wanted to go to the toilet, left the car and went into the gas station. After Culombe paid for the gas, at the point of a gun he ordered Kurpiewski into the boiler room where he shot him once, killed him, and took his wallet. Culombe then joined Taborsky in the main office of the station. They found and took some money from the cash register and the desk. During the search one Daniel J. Janowski, accompanied by his eighteen-month-old daughter, drove to the gas station. Taborsky and Culombe waited a few moments and when Janowski failed to drive away both left the station and approached the Janowski car. Culombe pretended to be a gas attendant and started to service the car. Thereupon Taborsky pointed a gun at Janowski, took his wallet containing four dollars and ordered him into the gas station, and from there into the toilet. Taborsky then shot Janowski twice on the left side of the head just above the ear,

and killed him. The child was left outside in the car. Taborsky and Culombe then drove to Culombe's house where they divided the money. Shortly thereafter the bodies of the two victims were found by a bus driver who called the police. The child was found in the car. An autopsy performed on the bodies of these two men revealed that they had died of gunshot wounds in the head.

During the investigation by the police Taborsky and Culombe were apprehended and made confessions. The foregoing facts were generally contained in the confessions (T. Vol. IV, p. 58).

From the judgments both accused appealed to the Supreme Court of Errors of the State of Connecticut and both judgments were upheld. Culombe petitioned for a writ of certiorari which was granted because of questions raised by the use of three confessions. Taborsky is not before the court.

For purposes of this hearing the facts which occurred after the murders and during the investigation are summarized.

While the investigation into all of these killings was being pursued, Joseph L. Taborsky and the petitioner Arthur Culombe as prime suspects were taken into custody Saturday, February 23, 1957.

SATURDAY, FEBRUARY 23, 1957.

At approximately 2:30 p.m., State Police Officers went to the home of the petitioner and spoke to Mrs. Culombe. At this time Culombe was in the bathroom and officers heard metallic noises coming from that room (T. Vol. I, p. 168; Vol. IV, Finding, p. 23, par. 83; p. 42, par. 3).

When the petitioner came from the bathroom, he was asked to go with the officers to State Police Headquarters.

Taborsky was already there. The petitioner and Taborsky went together with State Police officers to Coventry and Rocky Hill, Connecticut, in connection with an investigation of other crimes (T. Vol. I, pp. 169, 186; Vol. IV, Finding, p. 23, par. 85; p. 42, par. 5).

They were fed at a diner before returning to State Police Headquarters. When they returned to State Police Headquarters the petitioner was questioned for approximately one hour about guns (T. Vol. I, p. 191).

Petitioner said he had seven or eight guns at home and that he was a gun collector. He went with officers to his home at about 8:15 p.m. At his home, eight guns, some boxes of ammunition and three red bandannas were found. Mrs. Culombe was at home at this time. The officers and the petitioner returned to State Police Headquarters and the petitioner remained there that night. He was talked to after returning from his home for a short time (T. Vol. I, p. 175; Vol. IV, Finding, p. 23, par. 89; p. 42, par. 9).

At approximately 10:00 p.m. on February 23, he was placed under arrest on suspicion of having committed a felony (General Statutes, Sec. 6-49). He went to bed at approximately midnight. The questioning on this date was in connection with several different crimes and not just the New Britain killings (T. Vol. I, pp. 212, 230, 240; Vol. IV, Finding, p. 24, pars. 90, 91; p. 43, pars. 10, 11).

Petitioner told police officers that he had been in an institution for the feeble-minded and also that he could not read (T. Vol. I, pp. 264, 276).

The police knew that Culombe was an ex-convict and that he had been in the State Prison and Reformatory (T. Vol. I, pp. 261, 262, 263; Vol. III, p. 1173).

Culombe was considered by police officers to be shrewd and cunning (T. Vol. I, pp. 265, 270, 305).

SUNDAY, FEBRUARY 24, 1957

On Sunday, petitioner was questioned mostly about other crimes than the New Britain murders (T. Vol. I, pp. 176, 196, 197). The questioning occurred during the mid-afternoon and early evening (T. Vol. I, p. 439; Vol. II, p. 538). He was questioned a short time about the New Britain murders. He denied having anything to do with them (T. Vol. I, p. 273; Vol. IV, Finding, p. 43, par. 12). He was questioned by Lieut. Rome, the officer in charge of the investigation and by Sgt. Paige, a State Police officer working with Lieut. Rome. A Hartford police officer questioned him about other crimes not connected with the New Britain murders.

No teams of officers talked to him (T. Vol. I, p. 268). He was not questioned over long periods of time (T. Vol. I, p. 267).

The petitioner had seen his wife on two different times on Saturday while he was in police custody, and he did not ask her to get a lawyer for him. He never asked Sgt. Paige to get a lawyer for him (T. Vol. I, p. 193).

MONDAY, FEBRUARY 25, 1957

Petitioner was taken to the New Britain Police Department around noon on Monday, February 25, and booked on a charge of breach of peace. The bond was fixed at $25,000. (T. Vol. I, p. 248; Vol. IV, Finding, p. 43, par. 14). There were crowds around the police station when he was taken to New Britain. He was returned to Hartford to State Police Headquarters at about 2:00 p.m. He was questioned later that day by Lieut. Rome and Sgt. Paige about the New Britain matter but mostly about other crimes (T. Vol. I, pp. 248, 249, 404, 405,

440, 442; Vol. II, p. 559). Sgt. Paige talked with him about fifteen or twenty minutes (T. Vol. I, pp. 441, 442). The petitioner was questioned by Lieut. Rome for two or three hours (T. Vol. I, p. 267).

The petitioner asked Lieut. Rome about a lawyer, and the officer told petitioner he would call any lawyer that he wanted if he would tell him the name of the lawyer to call (T. Vol. I, pp. 276, 304). Petitioner never gave the police the name of any lawyer he wanted called. (T. Vol. I, pp. 276, 304, 511).

TUESDAY, FEBRUARY 26, 1957

On Tuesday morning, February 26, the petitioner was taken from Hartford to New Britain Police Court. The case was continued under bond. He wasn't required to nor did he plead. He wasn't called upon to do or say anything (T. Vol. I, pp. 296, 297; Vol. IV, Finding, p. 43, pars. 15, 16). While in New Britain, the petitioner with the police stopped at the scene of the murders. He was returned to State Police Headquarters and questioned during the early evening by Lieut. Rome (T. Vol. II, p. 550).

Lieut. Rome visited Mrs. Culombe, the petitioner's wife, at her home during the afternoon. She was asked to come to State Police Headquarters (T. Vol. I, p. 249). She came willingly. She wanted to talk to her husband (T. Vol. I, pp. 288, 289, 293, 365; Vol. II, pp. 734, 737).

Mrs. Culombe wanted to talk to her husband to question him herself about the incidents under investigation (T. Vol. I, pp. 201, 293). Lieut. Rome hoped she might help in getting a confession from her husband (T. Vol. I, pp. 370, 371). Mrs. Culombe talked to her husband (T. Vol. I, pp. 194, 203, 250, 251). The petitioner was upset when he talked to his wife and afterwards (T. Vol. I, pp. 400, 449). The Culombe children went to Headquarters with Mrs. Culombe because she wanted

them to be with her (T. Vol. II, p. 737; Vol. IV, Finding, p. 48, par. 48). The children were not present when Mrs. Culombe talked to her husband (T. Vol. I, p. 528; Vol. II, p. 549). The children saw the petitioner on some days after he had signed his confessions and at Mrs. Culombe's request (T. Vol. I, p. 528).

Sgt. Paige talked to Culombe in his cell for 15 or 20 minutes after he had seen his wife (T. Vol. I, 423, 424). He was taken to the County Jail after 8:00 p.m. (T. Vol. II, pp. 769, 770). Witnesses who saw him saw no evidence of any mistreatment of Culombe (T. Vol. II, pp. 710-716).

WEDNESDAY, FEBRUARY 27, 1957

On Wednesday morning Culombe was brought from the County Jail to State Police Headquarters at about 9:30 a.m. The new Britain Police Court adjourned mittimus committed him to the County Jail (T. Vol. I, p. 427). He wasn't questioned or talked to until approximately 1:30 p.m. (T. Vol. I, p. 380).

Sgt. Paige talked to him at that time about various crimes that were under investigation. He asked the petitioner not to lie about these crimes when questioned about them. He told petitioner to say rather than to lie that he didn't want to talk about a particular crime (T. Vol. I, p. 382). Detective Murphy also talked to Culombe, going over the same list of crimes that Sgt. Paige had. This was the first time Detective Murphy had ever talked to petitioner. Culombe responded that he didn't want to talk about each one of them. Both officers asked him about guns, and the petitioner said that the guns were under water (T. Vol. I, p. 388; Vol. IV, Finding, p. 43, pars. 17, 18).

Culombe then said he would show the officers where the guns were. He then went with four police officers to his home. He specified that they were to travel in an unmarked cruiser

or police car and he was assured that the car would have no police marker on it (T. Vol. II, p. 585). Lieut. Rome, Sgt. Paige, Detective Murphy and Detective O'Brien went with him in the car. Detective O'Brien, a stenographer, started to drive. En route the petitioner started to give a statement to Lieut. Rome. Detective O'Brien stopped the car and changed places with Detective Murphy, and Detective Murphy then drove the car. Detective O'Brien then took down in shorthand the statement which Culombe was making to Lieut. Rome. This statement taken down in shorthand by Detective O'Brien was essentially the same as was later committed to writing, as State's Exhibit Z and Z-1 for Identification (T. Vol. II, pp. pp. 565, 987). The verbal confession in the car and the written confession were made voluntarily without force, compulsion, fear or promise (T. Vol. IV, Finding, p. 43, par. 21; p. 46, par. 35).

Mrs. Culombe was at home (T. Vol. I, p. 389). Culombe showed the police where a gun and two blackjacks were hidden in back of the medicine cabinet in the bathroom. Some gun grips and other parts of a gun, being a cylinder pin and main spring, were found in a safe (T. Vol. I, pp. 390, 498; Vol. II, pp. 567, 1001; Vol. IV, Finding, p. 25, par. 103; p. 44, par. 23; State's Exhibit GG). Petitioner talked to his wife in his home and told her he was making a clean breast of things to cleanse his conscience and that he had told the police a true story. He also said that he might get life but that Taborsky would get the chair. He also said that he did not want to cause her any further embarrassment with her neighbors by the police coming to their home. He told his wife that he was afraid for her. He was afraid that Taborsky might attempt to do her harm, which was another reason for his cooperating with the police (T. Vol. II, p. 588; Vol. IV, Finding, p. 44, par. 26; p. 25, par. 104). His wife asked him how he became mixed up in these crimes and he said it was because of Taborsky (T. Vol. II, p. 589).

Culombe then directed the police to a pond near his home where he said two guns used in the New Britain job would be found (T. Vol. I, p. 391; Vol. II, pp. 960, 1003). He also said that the gun parts found in his home would fit one of the guns in the pond (T. Vol. II, p. 569; Vol. IV, Finding, p. 45, par. 27; p. 26, par. 105).

Some days later one gun was fished out of the pond by use of a potato hook and the other gun was found in the pond by use of an electro-magnet (T. Vol. III, p. 1109; State's Exhibits MM and NN).

The gun parts found in Culombe's home (State's Exhibit GG) fit the gun found in the pond (State's Exhibit NN; T. Vol. III, pp. 1119, 1125, 1126; Vol. IV, Finding, pp. 29, 30, pars. 127, 133, 134, 135, 136, 137; p. 45, par. 27).

He also pointed out a dump filled with water and stated that he had thrown a raincoat into the water after the New Britain shootings because it was splattered with blood. Detective Murphy found the coat in the water (T. Vol. II, p. 591; Vol. I, p. 391). The coat had the name, "Culombe" printed on the collar (T. Vol. II, p. 569). It had human blood spots on it (T. Vol. III, p. 1135; State's Exhibit FF; Vol. IV, Finding, p. 26, pars. 106, 107; p. 44, pars. 24, 25).

He showed the officers a culvert where wallets and keys taken from the victims in the New Britain shootings had been thrown by him. He had the officers return to his home where he showed them parts of a gun under a cabinet in the cellar. The gun parts had been mutilated by grinding (T. Vol. II, pp. 591, 961, 1005; Vol. IV, Finding, p. 26, par. 109). He took the officers to a service station and identified a black Oldsmobile which he said he used the night of the New Britain murders, and which he had previously owned (T. Vol. IV, Finding, p. 26, par. 110; p. 45, par. 29; Vol. II, pp. 571, 592). Culombe and the police officers returned to State Police Headquarters at

approximately 6:00 p.m. Culombe admitted in the presence of State Police Commissioner Kelly and Major Remer that he had participated in the New Britain crimes (T. Vol. IV, Finding, p. 45, par. 30; p. 26, par. 111).

After eating dinner the oral statements previously given were reduced to writing. Separate statements were prepared covering each crime (T. Vol. I, p. 395). The statement covering the New Britain murders was included in a statement which also covered the Leone shooting which had occurred on the same night (State's Exhibit Z-1 for Identification).

The New Britain murders and the Leone shooting were later separated (State's Exhibit Z).

The original statement (State's Exhibit Z-1 for Identification) including the other incident was committed to writing late in the evening of February 27, and the New Brtain portion of that statement was prepared at approximately 12:30 a.m. on February 28 and took approximately a half hour (T. Vol. I, p. 398; Vol. IV, Finding p. 45, par. 32; p. 26, par. 113). The method used for preparing the original statement (State's Exhibit Z-1 for Identification) was as follows: Lieut. Rome would ask a question. Culombe would give the answer. Lieut. Rome would put this answer into narrative form and the narrative would be typed (T. Vol. I, p. 502; Vol. II, pp. 572, 573). This statement (State's Exhibit Z-1 for Identification) is substantially the same as the oral statement given by Culombe in the car and taken in shorthand by Detective O'Brien (T. Vol. IV, Finding, p. 24, par. 101; p. 43, par. 21; Vol. II, pp. 564, 565, 987).

The statement (State's Exhibit Z-1 for Identification) was read to Culombe and he signed it. In the statement he admitted being present at the New Britain shootings but denied killing anyone stating that Taborsky killed both victims.

He asked the police to give a copy of his statement to the State's Attorney to show his cooperation (T. Vol. I, pp. 516, 521). He remained at State Police Headquarters that night at his own request (T. Vol. I, pp. 427, 432, 450).

At the time police commenced to question petitioner on Wednesday afternoon when he confessed, he had not been interrogated or talked to for the previous eighteen hours.

THURSDAY, FEBRUARY 28, 1957

Petitioner was arrested on Thursday on a bench warrant charging him with murder. He was presented in Superior Court and advised by the court with reference to his rights. He also was advised with reference to his right to have the public defender. He refused the public defender. He requested that Attorney Thomas F. McDonough be appointed to represent him (State's Exhibit BB; T. Vol. IV, Finding, p. 46, pars. 36, 37; p. 27, pars. 115, 116). He was advised by the court of his right to remain silent. He told the court that he wanted to cooperate with the police in any way that he could. He did not make any complaints to the court with reference to the conduct of the police.

He was remanded to the custody of the State Police for further investigation (State's Exhibit BB; T. Vol. II, pp. 1022, 1023; 1024). He was questioned by New York Police Officers later that afternoon about other crimes (T. Vol. I, p. 443). He remained at the State Police Headquarters that night at his own request (T. Vol. I, p. 510).

FRIDAY, MARCH 1, 1957

Attorney McDonough was appointed to represent Culombe. He talked to Culombe either on Friday, March 1st or Saturday, March 2nd. Culombe was kept at State Police

Headquarters because he did not wish to return to jail. His counsel did not object to this arrangement.

SATURDAY, MARCH 2, 1957

Petitioner was examined by two state appointed psychiatrists on Saturday morning. He may have talked to his counsel during the day. He was not talked to or questioned by the police.

State Police Officer Fersch, who did not know Culombe and who had never talked to him, was assigned to guard him in his cell at State Police Headquarters from 6:00 p.m. to midnight. When the officer came on duty at 6:00 p.m., he said "hello" to Culombe and then sat at the end of the cell block reading a book. No other prisoners were in the cell block and no officers or other prisoners came into the cell block.

Officer Fersch did not have any conversation with Culombe after coming on duty at 6:00 p.m. At approximately 10:00 p.m., Culombe called to Officer Fersch and told him he could not sleep because he had something on his mind he wanted to talk about. Culombe said he wanted to give the officer some information about the New Britain shooting. Culombe then orally told Officer Fersch the details of the New Britain shooting, stating that he had shot and killed the service station attendant (T. Vol. II, p. 909; Vol. III, p. 1086).

Officer Fersch reported this conversation to Lieut. Rome by telephone (T. Vol. II, p. 910; Vol. III, p. 1087; Vol. IV, Finding, pp. 46, 47, pars. 40, 41, 42; p. 28, pars. 121, 122, 123).

SUNDAY, MARCH 3, 1957

On Sunday morning, Culombe was taken to the interrogation room next to Lieut. Rome's office (T. Vol. II, p. 910). He told Lieut. Rome that he wished to change his previous

statement of February 27th (State's Exhibit Z-1 for Identification).

He then gave Lieut. Rome and Officers Moran and Fersch a new statement in which he admitted that he killed the service station attendant. This statement was the same as that orally given to Officer Fersch the evening before. The oral statement given to Officer Fersch the evening before and the written statement given on Sunday morning were made voluntarily and without force, compulsion, fear or promise (T. Vol. IV, Finding, p. 47, pars. 43, 44, 45; p. 28, pars. 124, 125, 126). The remainder of the statement was substantially the same as given by Culombe on February 27th (State's Exhibit EE; State's Exhibit Z-1 for Identification).

The petitioner's attorney was not present when the oral statement was given to Officer Fersch and was not present or notified when the written statement was prepared and signed on Sunday morning (T. Vol. II, p. 910; Vol. III, p. 1092).

On Sunday afternoon petitioner's counsel requested that Culombe be returned to the County Jail (T. Vol. I, p. 295).

MONDAY, MARCH 4, 1957

State's Exhibit Z-1 for Identification, which was petitioner's original confession given on Wednesday, February 27, 1957, included another crime (Leone) in addition to the New Britain shooting. On Sunday, March 3, 1957, the police decided to separate the two crimes and to make up a separate statement for each crime (T. Vol. I, pp. 434, 489, 491, 492, 503; Vol. II, p. 605; Vol. IV, Finding, p. 45, par. 32).

State's Exhibit Z is a statement of the New Britain shooting only (T. Vol. II, pp. 574, 995, 1009; Vol. IV, Finding, p. 47, par. 46). Counsel for the petitioner stipulated at the trial that State's Exhibit Z is a copy of the New Britain incident as it

was described in State's Exhibit Z-1 for Identification, and that State's Exhibit Z might be substituted and offered as an exhibit in place of State's Exhibit Z-1 for Identification (T. Vol. I, p. 491; Vol. II, p. 605).

The date and time on Exhibit Z was changed from 10:55 p.m., Wednesday, February 27, 1957, to 12:30 a.m., Thursday, February 28, 1957, to indicate the time when the statement about the New Britain shooting was prepared (T. Vol. I, pp. 504, 505; Vol. II, p. 1011).

On Monday, March 4, 1957, Lieut. Rome and Detective O'Brien went to the County Jail with the new statement of the New Britain affair (State's Exhibit Z; T. Vol. I, p. 505). Lieut. Rome explained the new statement to Culombe, that the new statement separated the New Britain crime from the crime committed in the Leone matter. He read the statement aloud to Culombe and Culombe said it was the same and he signed it (T. Vol. I, p. 506; Vol. II, pp. 574, 995, 1009). Petitioner's counsel was not present and was not notified that the police were to ask petitioner to sign this new statement. The petitioner was cooperative and signed the statement voluntarily without force, compulsion, fear or promise (T. Vol. I, pp. 506, 512; Vol. II, pp. 995, 1010; Vol. IV, Finding, p. 47, par. 46).

Other Pertinent Facts

When petitioner was taken into custody on Saturday, February 23, 1957, he was suspected of being involved in several murders and other crimes. The ensuing investigation carried on by the police and the questioning of the petitioner were in connection with all of these murders and other crimes. The investigation and the questioning were not limited solely to the instant case having to do with the New Britain murders. The record is replete with references to the investigation of

these other crimes. The following is a list of some of the references to the other crimes under investigation:

Transcript, Vol. IV, Finding, p. 39, par. 1

Transcript, Vol. I, pp.	175	186	212
	230	240	242
	248	259	279
	381	382	383
	384	385	388
	394	395	400
	406	407	439
	444	445	459
	461	464	470
	499		
Transcript, Vol. II, pp.	559	565	584
	726	727	

The facts stated in the confessions of Culombe were corroborated by independent evidence. The petitioner and Taborsky, his accomplice, were seen together on the day of the murders, both before and shortly after the killings. Culombe had purchased a television set on a deferred payment plan that afternoon in East Hartford. He paid in full for the set the following Monday. The seller of the television set helped him place the set in Culombe's Oldsmobile. That afternoon Culombe and Taborsky were seen removing the television set from the Oldsmobile (T. Vol. IV, Finding, p. 18, pars. 34, 35, 36; T. Vol. I, pp. 137-140; pp. 124-137). The Oldsmobile was later identified by Culombe as the car which he used to go to and from New Britain (T. Vol. IV, Finding, p. 26, par. 110; p. 45, par. 29). The body of the victim Kurpiewski was found in the boiler room with one bullet wound in the head (T. Vol. IV, Finding, p. 22, par. 79; State's Exhibit Q). He had said the attendant was shot once. Culombe remembered a little child in the car at the gasoline station (T. Vol. IV,

Finding, p. 22, par. 74). When he returned to the gas station to re-enact the crime after his confession, he said that the location of the desk and cash register had been changed. This was confirmed by other evidence (T. Vol. IV, Finding, p. 27, pars. 117, 118, 119). Two guns were found in the pond where Culombe said he had thrown them. One of the guns was a frame and certain parts of a gun found in Culombe's home fitted this gun (State's Exhibit GG; T. Vol. IV, Finding, p. 26, par. 105; p. 44, par. 23; p. 45, par. 27). A raincoat with human blood stains on it was found in a swamp where Culombe said he had thrown it (T. Vol. IV, Finding, p. 26, pars. 106, 107; p. 44, pars. 24, 25).

Taborsky, petitioner's accomplice, confessed on Friday, March 1, 1957. In his confession he never mentioned Culombe by name. He referred to him as "the other guy" (State's Exhibit DD; T. Vol. II, pp. 1035, 1036). All confessions of Culombe mentioned Taborsky by name. The confession of Taborsky and Culombe corroborated each other in the main (T. Vol. IV, pp. 58, 59).

Culombe testified before the jury for a limited purpose only (T. Vol. III, p. 1167; Vol. IV, Finding, p. 30, par. 140). He made no claim before the jury of mistreatment of his wife by the police or any mistreatment of himself.

Petitioner never has claimed that the confessions given by him were not the truth (T. Vol. II, pp. 671, 691, 696; Vol. III, p. 1167 et seq.). Culombe wanted the State's Attorney to know that he was cooperating (T. Vol. I, pp. 414, 417, 516, 521). He portrayed to the jury by cross-examination of state witnesses that he was cooperating with the police (T. Vol. II, pp. 980, 983, 995, 1042, 1043, 1044; Vol. III, p. 1097). He confessed and cooperated with the police hoping that he might get life imprisonment rather than the electric chair (T. Vol. IV, Finding, p. 44, par. 26; p. 25, par. 104).

During the investigation Culombe was treated fairly by the police. He said that Sgt. Paige treated him like a father (T. Vol. I, pp. 413, 414, 453, 454; Vol. II, p. 707). He had met Detective Murphy for the first time the very hour he confessed. He said Detective Murphy was good to him (T. Vol. II, p. 707): He received plenty of sleep and he was well fed (T. Vol. I, pp. 233, 267, 454, 693).

The State police told petitioner they would call a lawyer for him if he would tell them who to call (T. Vol. I, p. 276). He never gave the police the name of any lawyer he wanted them to call (T. Vol. I, pp. 276, 304, 511). He saw his wife at home when he was first taken into custody. He saw her again that same evening when the police returned to his home to pick up several guns. He saw and talked to his wife at State Police Headquarters on Tuesday night. He never asked his wife to get a lawyer for him (T. Vol. II, p. 706).

The petitioner was examined on behalf of the State by two court-appointed psychiatrists, Dr. Bancroft and Dr. Waterman. Dr. Bancroft had specialized in psychiatry for more than 30 years, with many years of court experience as an expert witness in criminal matters. Dr. Waterman, as a psychiatrist, had spent 35 years in state mental hospital service in New York and Connecticut. He had practiced neuro-psychiatry for many years and had testified as an expert in criminal cases (T. Vol. IV, Finding, pp. 40, 41, pars. 1, 5). At the psychiatric examination the petitioner was cooperative but indifferent. His stream of thought showed no disturbance. His replies were coherent and well constructed. Both psychiatrists were of the opinion that Culombe was a mental defective of the grade of high moron (T. Vol. IV, Finding, pp. 40, 41, pars. 2, 6, 7).

A State-appointed psychologist, Mr. Ibelle, examined Culombe both on behalf of the petitioner and on behalf of the State. He tested the petitioner's intelligence by several tests

and found him to be moderately defective. His full-scale intelligence quotient was found to be 64. His performance was found to be that of a middle grade moron (T. Vol. III, pp. 1188, 1189; State's Exhibit OO).

Dr. Doherty, a psychiatrist, furnished by the State for the petitioner, also examined Culombe. He served on the staff of several mental hospitals and was a psychiatric consultant at the State Prison. He was of the opinion Culombe was an adult with mental deficiency, without psychosis, and that he was in the moron classification. He was of the opinion he had a mental age of between 9 and 9½ years (T. Vol. III, p. 1180). He testified that intelligence tests determine basic innate intelligence but do not test experience (T. Vol. III, p. 1182). He was of the opinion that Culombe was not psychotic nor insane (T. Vol. IV, Finding, p. 41, par. 8).

Dr. Lieberson, a specialist in electro-encephalology, was furnished by the State to examine the petitioner for his defense. His examination indicated some dysfunction of the brain with no gross pathology, no evidence of tumor, and no evidence of an epileptic disorder. The encephalogram record did not show any gross abnormality. There was evidence of mild episodic deviant pattern which might be related to personality disturbance (T. Vol. III, p. 1177; Culombe's Exhibit No. 12).

Dr. Bancroft was of the opinion that it was impossible to liken Culombe, an adult man 33 years old, as similar to a mental capacity age group of 9 to 9½ years because he had had considerable experience in the world. He had increased in physical size, had come in contact with many things as a man, had been married, living with his wife, working, supporting his children, and paying his bills (T. Vol. IV, Finding, p. 41, par. 3; T. Vol. III, pp. 1305, 1306).

Culombe never made a motion for a separate trial. In fact, he desired to be tried with Taborsky so as to claim he was dominated by, influenced by, and in fear of Taborsky. He refused to have Taborsky's name deleted from Culombe's confessions (T. Vol. II, pp. 953, 954, 955, 970, 981, 982, 983).

Culombe testified before the court without the jury on the admissibility of his confessions and claimed his wife was mistreated by the police. His wife testified before the court without the jury that she was always treated fairly by the police (T. Vol. II, pp. 737, 744). It was testified that she voluntarily went to Police Headquarters at the request of police because she wanted to talk to her husband (T. Vol. I, pp. 289, 293, 365). Nothing was done by the police to Mrs. Culombe or the children to cause Culombe anxiety or to reduce his resistance or will power or to influence him to confess (T. Vol. I, pp. 288, 289, 293, 365; Vol. II, pp. 734, 737; Vol. IV, Finding, p. 48, pars. 47, 48, 49, 50).

Mrs. Culombe talked to her husband at police headquarters and was disturbed because he might be involved in the crimes under investigation (T. Vol. I, pp. 250, 251).

Mrs. Culombe was reluctant to testify on behalf of her husband. She refused to respond to a subpoena by petitioner's counsel and a capias had to be issued to bring her to court (T. Vol. I, pp. 387, 432; Vol. II, p. 744). Mrs. Culombe did not testify before the jury.

Summary Of Argument

1. A confession given by a mentally defective suspect in custody, after fair but extended questioning, during an investigation of several murders and other crimes, while he is without counsel does not under the particular circumstances violate the due process clause of the Fourteenth Amendment.

2. An accused who has counsel, has talked to and been advised by him, may at the request of police voluntarily sign another copy of a confession previously given, even though his counsel is not notified or present, and such conduct does not violate the Fourteenth Amendment.

3. A second confession by an accused, already arrested and charged with murder, given freely without interrogation or solicitation to a strange police officer two days after he has been presented in court and warned of his rights, and after he has counsel, has consulted and been advised by him, does not violate the due process clause of the Fourteenth Amendment, even though such confession is given to police without his counsel being notified or being present.

4. If a first confession shall be held to be coercive in the constitutional sense, the conviction should not be reversed on the ground it was given to the jury for its acceptance or rejection, when there is other substantial evidence, particularly a voluntary second confession, upon which the verdict may stand.

ARGUMENT

I.

The Confession made Wednesday, February 27, 1957, was Voluntary and Its Use Did Not Violate the Due Process Clause of the Fourteenth Amendment

The test of voluntariness is "whether the accused, at the time he confesses, is in possession of 'mental freedom' to confess to or deny a suspected participation in a crime."

Lyons v. *Oklahoma*, 332 U.S. 596, 602; 88 L. ed. 1481; 64 S. Ct. 1208 (1944)
Ashcraft v. *Tennessee*, 322 U.S. 143, 154; 88 L. ed. 1192; 64 S. Ct. 921 (1944)

Connecticut has long used the "orthodox" rule of procedure to test and determine the admissibility of confessions. Under this method the entire responsibility for deciding the admissibility of the confession rests exclusively with the trial judge as a matter of the competency of the evidence, and leaves to the jury its credibility.

3 *Wigmore on Evidence*, Sec. 861

This method generally provides the greatest protection to an accused because the trial judge's finding can be tested on appeal after a clean-cut adjudication of the issue of voluntariness.

See Meltzer, *Involuntary Confessions*, 21 Un. Chic. L. Rev. 317,

Before any of petitioner's confessions were admitted into evidence, the court, without the jury, conducted a preliminary hearing which lasted for four court days (T. Vol. IV, p. 63; Vol. I and Vol. II, pp. 381-773; Vol. II, pp. 907-924). All witnesses having knowledge of petitioner's custody and question-

ing, including police officers, jail guards, other prisoners, and jail physician, were examined at length in connection with the treatment of the petitioner. The officers were subjected to exhaustive and extended cross-examination. The petitioner testified in his own behalf. His wife was subpoenaed and was finally brought to court to testify in his behalf after a capias issued. The trial court made a specific finding in connection with the admissibility of the confessions (T. Vol. IV, Finding, II B, p. 41 et seq.).

After this lengthy preliminary hearing the trial court ruled that the confessions were not the result of coercion and were admissible. The trial court only determined that the confessions were voluntarily made, and left to the jury the weight and credibility to be given to them. The court charged the jury as to their right to determine what weight or credibility was to be given to them under all the circumstances, or to reject them entirely if found by them to be involuntary (T. Vol. IV, pp. 1469, 1470).

On review by this court of State court convictions, those matters usually termed issues of fact are for the conclusive determination of the State courts. Where there is conflict in the testimony as to what led to a contested confession, the determination of such conflict is not the concern of the Supreme Court. Such conflict comes to this court authoritatively resolved by the State's adjudication. But those elements of the events that took place in this case that are undisputed by the respondent State of Connecticut are relevant to the issues of due process. As to those elements the respondent welcomes an independent examination of the record.

Watts v. *Indiana*, 338 U.S. 49, 52; 93 L. ed. 1801, 1804; 69 S. Ct. 1347, 1357, (1949)

Cicenia v. *LaGay*, 357 U.S. 504; 2 L. ed. 2d 1523; 78 S. Ct. 1297 (1958).

(1) *Mental Defectiveness*

The State of Connecticut concedes that petitioner is moderately defective of the classification of middle or high grade moron. Police officers knew or were told by him that he could not read or write other than his name. He also told them he had been in a school for the feeble-minded. He was tested and found to have an I.Q. of 64. He was examined by three experienced psychiatrists ,a psychologist, a physician specialist in electro-encephalology, all furnished at the State's expense. Petitioner testified before both the court and jury.

The police also knew him as a dangerous ex-convict who had been in the State Prison and in reformatories. He was considered by police to be shrewd and cunning.

Although petitioner is classified as a moron, he does not suffer psychosis. His stream of thought showed no disturbance, his replies to questions were coherent and well constructed. He had much worldly experience, including much criminal experience.

The court and the jury had before them a realistic picture of the petitioner.

The mental equipment of the petitioner is a circumstance to be considered by the court in determining whether a confession is voluntary. However, the trial court and the jury have had the best opportunity to size up the man. This was a trial which lasted three months, including the lengthy hearings on change of venue and the weeks required to select the jury. The trial itself lasted approximately five weeks. Every tactic was tried to convince the jury that the petitioner was a child of tender years. But all experts testified that his tested innate intelligence did not measure his experience. From experience he was a hardened callous criminal who knew the ways of crime and the ways of police detection.

It is the respondent's position that petitioner was not coerced, that his confessions were voluntary, and that his mental status was only a condition and not a cause of his statements. Such condition had nothing to do with his confessions. That such is the fact will be manifest in the light of details hereinafter catalogued. Despite petitioner's claims of being mentally defective his counsel, as the factual basis for his arguments, cites petitioner's own testimony more than *fifty* times. He seems to be working both sides of the street.

(2) *Sustained Interrogation*

Petitioner claims that the police commenced the questioning with the object of obtaining a confession. What is wrong with that? It is the duty of law enforcement officers, acting fairly, to obtain confessions and to see that the guilty are apprehended.

There is no quarrel with the claim that petitioner was taken into custody at 2:30 p.m. on Saturday, February 23. He confessed at approximately 3:30 p.m. on Wednesday, February 27. But as to what happened each day, the respondent State of Connecticut respectfully asks the court to examine its statement of the case. The petitioner takes careless editorial license with the facts as shown in the record.

He blithely states the questioning was in intervals of three to six hours. Where does that appear in the record? He relates that the questioning was in relays by teams of police. His record citation will bear out that the teams of police were only designated to pick up the accused and his accomplice Taborsky. There never was any questioning by relays or teams. There never was any continuous exhaustive questioning. He was questioned only during normal hours (T. Vol. I, pp. 267, 268).

Petitioner never claimed he was treated unfairly. He said that Sgt. Paige treated him like a father (T. Vol. I, pp. 413,

414, 453, 454; Vol. II, p. 707). He received plenty of sleep and he was well fed (T. Vol. I, pp. 233, 267, 454, 693). He appeared in Superior Court on February 28 before Judge Bordon. He never made any complaint to the court about his treatment. On the contrary he said he wanted to cooperate with the police in any way that he could (State's Exhibit BB; T. Vol. II, pp. 1022, 1023, 1024).

Petitioner alludes to physical violence but that claim seems to be abandoned. There was no physical violence nor evidence of any. He was not kept incommunicado. He saw his wife at least three times between Saturday afternoon and Tuesday night.

The reason for the extended time for questioning is that the police were investigating not only the New Britain murders, but several other separate crimes and murders which the petitioner was suspected of having committted. The investigating officers had to go out to follow up leads. All items of information had to be checked out. All of this took time and work (T. Vol. I, pp. 446, 452, 455).

Why did Culombe confess on Wednesday? He confessed voluntarily because he wanted to make a clean breast of things. He hoped to get life and save himself from the electric chair. He expected his accomplice to get the electric chair but that he would not because he cooperated. He told all this to his wife on Wednesday afternoon when he confessed. He wanted the State's Attorney to be given a copy of his statement to show his cooperation. The next day he made no complaint in court about abuse or pressures. But the most significant fact which devastates his claim of coercive treatment is that during the trial he never testified before the jury about such conduct. He took the stand before the jury—but never mentioned any of the circumstances he now claims are violative of his rights. He never claimed that his confession resulted from mistreat-

ment or that he was mistreated. He portrayed before the jury the picture of a nine-year-old who was cooperating and helping the police; the picture of the docile mental defective under the domination and influence of Taborsky. His new tactics in this proceeding demonstrate his desire for a second bite of the apple.

The questioning was fair and reasonable. Such interrogation is an indispensable instrumentality of justice. It is necessary in order to protect society from the criminal.

Ashcraft v. *Tennessee, supra*, at p. 160

(3) *Illegal Police Procedures and Delaying Tactics.*

A confession is not inadmissible as violative of due process merely because of delay in appearance of the accused before a proper tribunal.

Lyons v. *Oklahoma, supra* (illegally detained 16 days); *Gallegos* v. *Nebraska*, 342 U.S. 55; 96 L[redacted]86; 72 S. Ct. 141 (1951) (illegally detained 25 days)

The failure of the state authorities to comply with local statutes requiring that an accused be promptly brought before a magistrate does not render involuntary a confession of one detained by police. *Fikes* v. *Alabama*, 352, U.S. 191; 1 L. ed. 246; 77 S. Ct. 281 (1957) It is a factor that may be considered in the light of all the circumstances.

The question is whether, under these and other circumstances of the case, that conduct induced the accused to confess. Unless it did, it cannot be said that the illegality vitiated his confessions. Culombe at the time of the confessions did not think his detention was illegal. He did not think or know there might be anything technically wrong with holding him at the police barracks or removing him from the jail to the barracks. Thus, no irregularity in the detention, had there been any,

could have induced or contributed to the inducement of, the confessions.

State v. Rogers, 143 Conn. 167, 173; 120 A. 2d 409 (1956)
State v. *Guastamachio*, 137 Conn. 179, 183; 75 A. 2d 429 (1950)
State v. *Zukauskas*, 132 Conn. 450, 459; 45 A. 2d 289 (1945)
State v. *Buteau*, 136 Conn. 113, 123; 68 A. 2d 681 (1949)

The Court was warranted in concluding that the confession and admissions of the accused were not the result of any illegal detention. The State claims that at no time during these proceedings was Culombe illegally detained. In *State* v. *Buteau*, supra, at 122, the Court stated:

> "Neither the constitution of the United States nor the constitution of Connecticut requires that one arrested for a crime shall be promptly taken before a committing magistrate; all they provide is that he shall have the right to 'a speedy and public trial'; U.S. Const. Amend. VI; Conn. Const. Art. 1 Sec. 9; and the requirements in effect in the federal courts that one arrested shall be promptly presented before a 'committing magistrate' is the result of a rule they follow. *Upshaw vs. United States*, 335 U.S. 410, 411, 69 S. Ct. 170, 93 L Ed. 129."

Nevertheless, if any of the activities of the police in connection with Culombe should be found to constitute illegal detention, such detention is of no import with respect to the admissibility of the confessions in the absence of a causal connection between such detention and the confessions. The trial court found that the confession was voluntary and that there was no causal connection between it and any unlawful detention of Culombe (T. Vol. IV, Finding, pp. 46, 47, pars. 35, 39, 41-46). This conclusion follows the rule stated in *State* v. *Buteau*, supra, 123:

"Our rule * * * * is that the fact of illegal detention at the time a confession is made does not render it inadmissible unless that fact is causally connected with the securing of the confession."

(4) *Use of Wife and Family*

This claim of petitioner is based on alleged facts which are not found or proven and the occurrence of which are emphatically denied by the State. There is nothing in the record to show that the children saw their father before the confessions. The trial court found that Mrs. Culombe had come voluntarily to police headquarters with her children whom she did not want to leave alone. She was attended by a policewoman who was a nurse. She was well treated and at no time was she used or were the children used to bring pressure on Culombe (T. Vol. IV, p. 66, Finding, p. 48, pars. 47, 48, 49, 50; Vol. II, pp. 734, 735, 737, 738, 739, 942). The wife of a suspect is a legitimate and likely subject of police inquiry.

Where there is a dispute as to whether the acts charged as coercive actually occurred, or where different inferences may fairly be drawn from admitted facts, the trial judge and jury are not only in a better position to appraise the truth or falsity of the assertions of petitioner from the demeanor of the witnesses, but the legal duty is upon them to make the decision.

Lisenba v. *California*, 314 U.S. 219; 86 L. ed. 166; 62 S. Ct. 280 (1941).

Mrs. Culombe didn't testify before the jury. She was a reluctant witness for her husband before the court and she admitted in her testimony the essential facts found by the court. The petitioner takes nothing with this claim.

(5) *Language of Confession*

This argument can be disposed of summarily. The petitioner made an oral confession Wednesday afternoon in the

car to Lieut. Rome. Sgt. O'Brien, a stenographer, took down in shorthand exactly what he said. That story taken verbatim is essentially the same as appears in his written confessions (T. Vol. II, pp. 565, 987; Vol. IV, Finding, p. 43, par. 21; p. 46, par. 35). Virtually the same story was given orally to officer Fersch on Saturday night (T. Vol. II, p. 909; Vol. III, p. 1086). The confessions did not fit the facts known to police. The police were directed to facts supplied by the confessions. The same details appear in all confessions.

(6) *Lack of Counsel*

From the time Culombe was taken into custody on Saturday afternoon, February 23, he had abundant opportunity to call an attorney. The police offered to call any attorney he would name but he named none. He saw his wife twice Saturday, February 23, while he was in custody. He saw her at police headquarters at least once before his confessions. He never requested his wife to call a lawyer for him (T. Vol. II, p. 706).

His appearance at New Britain for booking at police headquarters was not a hearing, and for it he did not require counsel. His appearance in police court in New Britain did not jeopardize his rights. He was not required to, nor did he, enter any plea. Culombe seems to claim that as soon as he was taken into custody he should have had counsel furnished by the state. Such a holding would mean that police could not question a suspect during an investigation before he has a chance to obtain counsel. There is no such inflexible rule. *Cicenia* v. *LaGay*, supra, p. 509.

Lieut. Rome told Culombe he would call any lawyer he wanted, but he named none. Police officers are not required to select a lawyer for a defendant. He must make his own choice. Culombe could have asked his wife at any time to call him any lawyer he wanted. If the police ever selected a lawyer for a defendant there would be criticism of the choice or claim of

collusion. The claim would be made that the choice of a lawyer by police was violative of due process.

A. *At what state of the proceedings is an attorney required?*

No real decision has been made as to when an accused must have an attorney. The question is one of fact. 146 A. L. R. 369; 42 Col. L. R. 271

The basic upholding of right to counsel was in the "Scottsboro" case, *Powell* v. *Alabama* 287 U.S. 45; 77 L. Ed. 158; 53 S. Ct. 55 (1932); but from arrest through trial consumed only six days, and this case has not factual relevance to this case. The Fifth Circuit Court's rule is fluid in that there is no automatic requirement of counsel at absolutely every stage of the proceedings.

Martin v. *U.S.* 182 F. 2d 225, 228 (1950)

Habeas corpus was denied by the Second Circuit Court where petitioner was forced to plead, after arraignment, without counsel since there was no showing of real denial of due process.

DeMaurez v. *Swope*, 104 F. 2d 758, 759 (1939)

Spano vs. *New York* 360 U.S. 315; 3 L. Ed. 2d 1265; 79 S. Ct. 1202 (1959), can be distinguished because there the accused was indicted for murder, trial scheduled, counsel hired and consulted, and then the accused was held incommunicado, subjected to third degree, and fraudulently tricked into the resultant confession that was used in evidence.

B. *The Claimed Irregularity Must Have Prejudiced Accused's Case*

This basic rule requires the showing of prejudice as a prerequisite for claimed denial of right to counsel. *Crooker* v. *California* 357 U.S. 433; 2 L. Ed. 2d 1448, 1454; 78 S. Ct. 1287

(1958); *DeMaurez* v. *Swope*, supra; 146 A. L. R. at page 425, and cases cited therein, especially *Voight* v. *Webb*, 47 Fed. Supp. 743 (1942), where the court said:

> ". . . the possibilities of prejudice must have been sufficiently substantial so as to have taken them out of the realm of gossamer shadows."

The courts are concerned with such questions, of course, but there is no denial of due process if the record satisfies them that no prejudice to the accused resulted. *Harley* v. *U.S.* 242 F. 2d 27, 28 (C.A.D.C. 1957). This is emphasized by the *DeMaurez* opinion because the petitioner had pleaded not guilty and upon trial was represented by counsel.

Note particularly Judge Rifkind's opinion in *U.S. ex. rel. Mitchell* v. *Thompson*, 56 Fed. Supp. 683 (D.C.S.D. N.Y. 1944) which stated that the accused well knew with what he was charged and why he was detained (687); and nothing in the record showed any avenue of investigation nor line of evidence which might have been produced to his advantage (688).

C. *Need for Orderly Criminal Procedure*

Despite the general rule—undefined—of *Powell* v. *Alabama*, *supra*, and *Johnson* v. *Zerbst* 304 *U.S.* 458; 82 L. Ed. 1461, 1466; 58 S. Ct. 1019 (1938), that the "guiding hand of counsel" is required "at every step in the proceedings against him", the latter opinion makes particular note of the presumption of regularity of the judgment of a trial court.

The record in this case shows that full and complete hearing was granted on all matters presented. *Torrence* v. *Looney* 233 F. 2d 715, 717 (C.A. 10, 1956). Perhaps this Culombe case is an instance of the thinking of Judge Clark in *U.S.* v. *Mitchell*, 137 F. 2d 1006, 1011 (C.A. 2, 1943), that the accused takes an action of shifting position during trial because of the "damaging nature of the case against him".

The opinion in *Crooker v. California*, supra, is pertinent (italics actually appear in the opinion):

> "Petitioner . . . would have every state denial of a request to contact counsel be an infringement of the constitutional right *without regard to the circumstances of the case.*" (440)
>
> (Culombe did ask for counsel during investigation, but named none.)
>
> ". . . such a doctrine would create a complete anomaly since nothing would remain that could be corrected on new trial." (440) "Refusal by state authorities of the request to contact counsel necessarily would then be an absolute bar to conviction."

If anything occurred which did effect his rights, the rule sought for would still have a

> "devastating effect on enforcement of criminal law, for it would effectively preclude police questioning—*fair as well as unfair*—until the accused was afforded opportunity to call his attorney." (441)
>
> "Due process . . . demands no such rule." (441)

Under the law an accused is entitled to counsel to aid him in his defense, not to prevent voluntary action on his part. *State vs. Bunk*, 4 N.J. 461, 470, 73 A. 2d 249 (1950).

The rule in Connecticut is that an accused has no constitutional right to counsel before arraignment. *State* v. *Rogers*, supra, 172. See 3 A. L. R. 2d 1003, 1032 et seq. This court has often recognized that it is of "the very essence of our federalism that the states should have the widest latitude in the administration of their own systems of criminal justice." *Cicenia* v. *LaGay*, *supra*, p. 510 citing *Hoag* v. *New Jersey* 356 U.S. 464. 468, 2 L. ed. 2d 913, 918, 78 S. Ct. 829 (1958); (T. Vol.

IV, p. 62). The test to be applied is "whether petitioner's denial of counsel at pretrial stages so prejudiced him that it infected his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice.' " *Crooker* v. *California*, *supra*, p. 439. Upon all the circumstances the petitioner was not unlawfully denied counsel (T. Vol. IV, pp. 62, 63).

II.

The signing on Monday, March 4, 1957, of another copy of his confession previously given, after he had counsel and consulted him, even though his counsel was not notified or present, did not make such confession inadmissible as violative of due process.

Because a defendant has counsel, the police are not prohibited from continuing their investigation in connection with the crime for which he is held. Police have a right to ask him questions and to use whatever information the defendant may voluntarily offer.

Petitioner was arrested on a bench warrant, charging murder and had appeared in court on Thursday, February 28. He had been warned of his rights by the court. Counsel had been assigned to him and had consulted with him and advised him. He had not been indicted for murder as required by statute (G. S. 54-45, *infra*, Appendix A p. 3). On the following Monday the police requested petitioner to sign another copy of his confession previouosly given to police. The copy omitted a portion of the first confession relating to another crime. Other than that change, it was the same confession previously signed. Petitioner voluntarily signed it without his counsel being present (State's Exhibit Z.)

Petitioner has injected into this issue the unfounded claim of trickery. The basis for this is testimony of the petitioner as appears in T. Vol. II, p. 677, as follows:

"I *believe* I said that my attorney didn't want me to sign anything and to let me alone, and he says, 'He knows about this and I guess it is all right', *or something or another.*" (emphasis supplied)

This equivocal self-serving testimony is in contrast to the forthright testimony of Lieut. Rome and Detetive O'Brien as appears in T. Vol. I, pp. 505, 506, 512; Vol. II, pp. 574, 995, 1009, 1010, and the Finding by the court, T. Vol. IV, Finding, p. 47, par. 46.

Nothing further need be said about this baseless charge of trickery. He has reached the bottom of the barrel.

Petitioner claims that once he was arrested on the bench warrant he was then beyond the sphere of police investigation. He likens his invented facts to *Spano* v. *New York*, supra. He cannot shape the cloth to fit the mold.

There is no trickery as in *Spano*. He was only arrested, not indicted as in *Spano*. There was no questioning or interrogation of petitioner. No new information was requested or solicited. He was told what the statement was, why it was prepared, and it was read to him. He said he understood it and it was correct, and he signed it. At the trial petitioner's counsel stipulated to use this confession (State's Exhibit Z) rather than the original confession (State's Exhibit Z-1 for Identification).

The defendant had been advised by his counsel. In fact, on the day before, the defendant had signed a second confession that he had gratuitously offered to a strange police officer. His counsel asked that he be removed to the jail and he told him not to sign any paper or give any statements (T. Vol. II, p. 676). In spite of that advice by his counsel he voluntarily signed the statement. He does not have to follow his counsel's advice. He was cooperating, hoping for leniency. Whatever his motive, he had the free choice to admit, deny, refuse to

answer, sign or refuse to sign. This conduct of Culombe demonstrates that he was doing all he could, hoping to escape the electric chair.

This particular incident is significant because it is a circumstance surrounding the original confession which occurred subsequently to it, indicating that the original confession was voluntary. Such subsequent conduct may be properly considered on the question of voluntariness of the first confession.

Haley v. *Ohio*, 332 U.S. 596; 92 L. ed. 224; 68 S. Ct. 302 (1948)

III.

The Second Confession Signed on Sunday, March 3, 1957, while Defendant Was Under Arrest and Charged With Murder, Given Freely Without Interrogation or Solicitation to a Strange Police Officer Two Days After He Was Presented in Court and Warned of his Rights, After He Had Counsel and Had Consulted and Been Advised by him, Did Not Violate The Due Process Clause of the Fourteenth Amendment, Even Though Such Confession Was Given To Police Without His Counsel Being Notified or Being Present.

If the first confession of Wednesday, February 27, 1957 (Exhibit Z-1 for Identification) is found to be voluntary there can be no serious question but that the second confession of March 3 is clearly voluntary. That confession was gratuitously given by the petitioner orally on Saturday night, March 2, to a strange police officer who had never talked to him, who had never questioned him, and who had never had any part in the investigation of these crimes. At the time that the confession was made nobody was talking to the petitioner and no one had been talking to him. As a matter of fact, since the previous Thursday afternoon, when New York police officers talked to him about some other offense, the petitioner had not been interrogated or questioned by police officers at all. He

had talked to his counsel and been advised by his counsel. On Saturday morning some two hours had been spent talking to psychiatrists, but the psychiatrists were not investigating the the charges for which the petitioner was being held. That this confession was voluntary is also apparent because Culombe told Officer Fersch at 10:00 o'clock at night that he couldn't sleep because he had something on his mind and wanted to talk about it. When the officer came to his cell petitioner blurted out the details of the New Britain killings. He said that he had killed the service station attendant (State's Exhibit EE). Officer Fersch at this time did not know anything about the details of the New Britain killings as he had not been working on the investigation.

This confession was made by Culombe because of the weight of the crime on his conscience. He made this confession after he had been advised in open court with reference to his rights and after he had counsel, had talked to his counsel and been advised by his counsel. It is true that he had been arrested on a bench warrant and charged with murder, but up to this point he had not been indicted nor had he been arraigned.

Even though he had counsel, such fact alone does not prohibit the police from listening to a voluntary and freely offered statement. If a defendant under arrest and in custody wants to start talking to authorities, the fact that he has a lawyer does not prohibit the authorities from listening to whatever the defendant desires to say. Under the circumstances a police officer who would refuse to listen to what the defendant offered would be violating his oath of office. Officer Fersch had no alternative other than to act as he did.

The trial court made a specific finding that the second confession of March 3 and the oral confession given to Officer Fersch the night before were voluntary (T. Vol. IV, Finding, p. 47, pars. 43, 44, 45). Petitioner gave the second confession

without interrogation or solicitation, to a strange officer, after being warned by the court and advised by his counsel. He just wanted to confess. He had decided it was a wise course to confess, to cooperate and to hope for leniency. He gave this confession orally on Saturday night and gave a written confession the next morning.

This second confession is another circumstance subsequent to the first confession that indicates the character of, and motivation for, the first confession. This subsequent conduct confirms that the first confession was voluntary and that Culombe confessed originally "to save his neck". He wanted to confess, as much so after he had counsel and had been warned in court, as before. *Haley* v. *Ohio, supra.* This second confession was materially similar to the first confession in every respect except petitioner admitted he killed the service station attendant. This second confession, and the circumstances in connection with it, can be considered by the court in weighing the question of voluntariness of the first confession.

Gallegos v. *Nebraska, supra.*

It is respectfully requested that the court make a determination as to whether this second confession is voluntary, even if the court shall find that the first confession is involuntary.

With reference to the second confession the claim is made that since petitioner was under arrest and already had a lawyer, the police had no right to talk to him. The police have a right to talk to a defendant at least to the time of his arraignment.

Crooker v. California, supra
Cicenia, v. La Gay, supra

The defendant had not been indicted when he gave his second confession. The fact that he was talked to at defend-

ant's own request, after he had a lawyer, without his lawyer being notified or being present, is at most an ethical question. Certainly it is not a constitutional question.

IV.

The Conviction should Not Be Reversed Where, Under Connecticut Procedure, The Jury Was Given The First Confession For Its Acceptance Or Rejection, Even Though It Is Found To Be Constitutionally Coerced, And There is Sufficient Substantial Evidence In The Second Confession To Support A Conviction.

Under the confessions procedure used in Connecticut the determination by the trial judge, without the jury, that the confessions were made freely and voluntarily is a finding on a preliminary question of fact. The conclusion was drawn from conflicting testimony in the discretion of the trial court. The exercise of that discretion under Connecticut law is not a ground for review unless the appellate court can see plainly that the discretion was abused.

State v. *Willis*, 71 Conn. 293; 41 A. 820 (1898)
State v. *Cross*, 72 Conn. 722; 46 A. 148 (1900)

The trial court, after admitting the evidence, leaves to the jury what weight they think it should have. The jury are the triers of the persuasive sufficiency of all evidence submitted for their consideration. Under the charge the jury again considers whether the particular confession was voluntary. The jury passes on this evidence according to its intrinsic value in the mind of the jury and not according to some legal definition.

3 *Wigmore*, Sec. 862

In connection with the confessions the court charged the jury as follows:

"You will recall that the State has offered in both cases, in evidence, testimony as to statements made out of court by the accused, which it claims were in the nature of a confession or admission by him or them tending to show his or their guilt of the crime charged, and that you were excused while I considered the question of its admissibility. That I did hold the testimony to be admissible, you know. Let me now caution you that this ruling on my part meant no more than that in the performance of my duty I concluded that the circumstances surrounding the making of these statements were such that you should have them before you for your consideration, that my ruling is not to be taken by you as giving to those statements any more weight in your deliberations than you conclude that they should have."

(T. Vol. III, p. 1469)

"The confessions of the accused which have been admitted as evidence are to be considered by you in connection with all the other evidence in the case. Made as it was out of court, it is not like the sworn testimony offered before you. It is to be considered by you as a declaration inconsistent with the accuseds' plea of not guilty. It may be, however, if you consider that it or any one of them were made by the accused, evidence, circumstantial in its nature, of the truth of the statements made in it. It is for you to determine what weight is to be given to it, and in that connection you should consider the circumstances under which it was made as they appear in the evidence before you."

(T. Vol. III, pp. 1469, 1470)

"You are to consider whether or not in your opinion these statements were made voluntarily and were not obtained by violence or because of fear or duress so that they are likely to be false, and if you so consider that they

were made voluntarily you may consider what weight should be given to them in accordance with the instructions which I have already given you."

(T. Vol. III, p. 1470)

Under this charge to the jury this question is necessarily raised:

When the court determines that the confession is admissible, does the court determine, as a matter of law, that the confession was voluntary, or does the court determine merely that there was evidence from which the jury could find that it was voluntary?

When the court permits the confession to be admitted the defendant may still claim before the jury that it was involuntary.

In this case, before the jury, the defendant did not claim that any confession was involuntary. Before the jury, after the confessions were admitted, the defendant did not even cross-examine state witnesses as to coercion. The defendant did not call any witnesses before the jury to prove coercion. After the confessions were admitted the defendant portrayed to the jury only that he was cooperating with the authorities. He testified himself only for a limited purpose, and never claimed any mistreatment. He never claimed his confessions were coerced. He did not call his wife to testify before the jury (T. Vol. III, p. 1167; Vol. IV, Finding, p. 30, par. 140; Vol. II, pp. 980, 983, 995, 1042, 1043, 1044; Vol. III, p. 1097).

Therefore, on a question of the credibility and persuasive sufficiency of the evidence, and in a matter the determination of which the jury were specifically charged—namely, whether the confessions were made voluntarily and without duress or coercion—the defendant in effect conceded that the confessions were voluntary.

The jury could have found that both the first confession and the second confession were voluntary. The jury could have found an absence of coercion in both confessions. But even if the jury had rejected the first confession, a conviction could be based constitutionally on the other sufficient evidence of the second confession. There is no way to get an explanation by the jury of a general verdict in criminal cases. There is a presumption that the jurors followed instructions.

The facts in the instant case come within the rule of *Stein* v. *New York*, 346 U.S. 156; 97 L. ed. 1522; 73 S. Ct. 1077 (1953). Stein decided that a jury may be properly exposed to a confession which they might have found to be coerced, but the jury might have also found the same confession to be voluntary.

This court has long held that the states are free to allocate functions between judge and jury as they see fit. If the standard of due process is that a conviction cannot stand when based on inherently untrustworthy evidence, the jury, under the Connecticut rule of procedure, may consider this question. In this case the jury heard no claims of pressure or coercion and no evidence to indicate to them that any of the confessions might be false. They had a right to find the first confession voluntary as well as the second.

If the standard of due process is that the questioning of defendant fell below the standards of fair play, and the police methods in themselves offended due process, then under Connecticut procedure the conviction still may stand on other substantial evidence even though the court finds that the first confession failed to meet this standard. Such a holding will extend the Stein rule to those cases where the test of voluntariness is whether the police methods were inherently offensive. In such a situation where the jury has the question of voluntariness given to them, their verdict, arrived at after

seeing and hearing all the witnesses, ought to be as constitutionally sound as the decision of the court, based on judge created standards of due process, arrived at from a cold record.

The court sometimes may be seriously misled in passing on the standards of due process, such as in the instant case. The petitioner vigorously claimed unfair police methods before the court in the absence of the jury. The trial court obviously did not believe all the claims of petitioner and decided that the question of voluntariness ought to be before the jury, and he admitted the confessions for the jury's acceptance or rejection. What happened before the jury? The petitioner changed his tactics completely, and portrayed before the jury a picture of cooperation with the police, a picture of one who had helped police solve the crimes, and particularly helped to break the case of his accomplice Taborsky. Does not the jury have a better opportunity to evaluate the changing claims of the petitioner and to decide whether under the circumstances he got a fair shake from the police?

The court may well apply both standards to measure due process. Under state procedures such as used in Connecticut, the jury actually applies the standard of trustworthiness of the evidence under general jury instructions, and actually applies the standard of fair play by using their good common sense and experience in weighing evidence from live witnesses.

It is the position of the respondent State of Connecticut, however, that under the facts in this case the petitioner's claims of unfair police methods cannot be substantiated by the the record. It does not appear from the evidence that he was subjected to such pressure that there is danger the confessions are false. There is absolutely no proof of the effect of the

claimed coercive acts on the mind of the defendant. On the contrary there is abundant evidence that his confessions stemmed from a guilty conscience, and a hope to save himself from the electric chair.

Conclusion

The confessions of the petitioner admitted into evidence were genuine and truthful. They furnished details the police had no knowledge about, and were not answers to leading questions put by police. The confessions were given by Culombe to Sgt. Paige and Detective Murphy, both of whom were good to him. He confessed to Detective Murphy the first time he talked to him. He confessed to Officer Fersch, a stranger to him and to the investigation by voluntarily telling him details of the murder. He told his wife he confessed because he wanted to make a clean breast of things. He told Officer Fersch he wanted to tell him the story because his conscience was bothering him. He told his wife he was confessing and telling the truth and that he might get life, but Taborsky would get the chair. Petitioner never claimed before Judge Bordon any mistreatment of himself or his wife. He told Judge Bordon he wanted to cooperate with police in any way that he could. He voluntarily signed two confessions after he had counsel and had been advised by his counsel not to sign anything. He testified before the jury, but never claimed he was mistreated or that his confessions were coerced. He portrayed to the jury a picture of cooperation with the police. Culombe was experienced in the ways of crime and in the ways of police investigation. He knew what he was doing when he confessed and he did so voluntarily, hoping to escape the electric chair.

It is respectfully submitted that on the facts and the law, the verdict and judgment of the trial court of guilty, unanimously affirmed by the Supreme Court of Errors of Connecticut, ought to be affirmed.

Respectfully sut nitted,

State of Connecticut, Respondent

by JOHN D. LABELLE,
State's Attorney for Hartford County

J. READ MURPHY,
Assistant State's Attorney

GEORGE D. STOUGHTON,
Assistant State's Attorney

APPENDIX

General Statutes of Connecticut Revision of 1958

Sec. 6-49. *Arrest Without Warrant.* Sheriffs, deputy sheriffs, county detectives, constables, borough bailiffs, police officers, special protectors of fish and game and railroad and steamboat policemen, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the speedy information of others, and members of the state police department or of an organized local police department or county detectives shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority. (1949 Rev., S. 465; 1953, S. 195d.)

Sec. 54-80. *Public Defender.* The judges of the superior court shall, at each annual meeting in June, appoint an attorney at law, of at least five years' practice and residence, in each county in the state, except New Haven county, in which they shall appoint one such attorney for the New Haven district and one for the Waterbury district, to be public defenders thereof for the ensuing year and shall, from time to time, make rules and regulations necessary for the conduct of such office. Each such public defender shall act as attorney in the defense of any person charged with crime in either the superior court or the court of common pleas for the county for which he has been appointed, when such person is without funds sufficient to employ counsel for such defense. The public defender may, in accordance with the rules and regulations adopted by the judges of the superior court, act, within the county or district for which he has been appointed, as attorney for the defense of any such accused person upon any

preliminary hearing before any court in the state or before any committing magistrate. Any vacancy in the office of public defender shall be filled by the chief justice until the next annual meeting of the judges of the superior court. (1949 Rev., S. 8796.)

Sec. 54-81. *Allowance To Public Defenders.* At the close of each criminal term or session of the superior court or court of common pleas, the public defender shall file with the clerk an itemized statement of expenses necessarily incurred by him during such term and any such preliminary hearing as provided in section 54-80, and the court shall allow a reasonable sum for such expenses, which shall be taxed and paid as other expenses in criminal cases in either said superior court or court of common pleas. In addition to the expenses necessarily incurred in the court of common pleas, a reasonable allowance for the services of the public defender rendered in said court shall be made by the presiding judge at the conclusion of the criminal term. The judge presiding at any term or session of the superior court or court of common pleas may, upon application of the public defender for such county, appoint an attorney other than the public defender to represent any person charged with crime in any criminal court in such county, if, in the opinion of such judge, such appointment should be made, and in such case the judge of the court in which such representation was made shall allow a reasonable sum for such services and necessary disbursements in connection therewith, such amount to be paid as are other court expenses. (1949 Rev., S. 3615.)

Sec. 53-9. *Degrees Of Murder; Trial.* All murder perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or committed in perpetrating, or in attempting to perpetrate, any arson, rape, robbery or burglary, or injury to any person or property by means of any explosive compound, shall be

murder in the first degree; and all other kinds of murder shall be murder in the second degree; and the degree of the crime charged shall be alleged in the indictment; but the jury before which any person indicted for murder is tried may find him guilty of homicide in a less degree than that charged; and, if he is convicted by confession, the court, to be composed of the judge presiding at the session and two other judges to be designated by the chief justice of the supreme court of errors, shall hear the witnesses in such case, and such judges, or a majority of them shall determine the degree of the crime and render judgment and impose sentence accordingly. (1949 Rev., S. 8350.)

Sec. 53-10. *First Degree Murder, Other Homicides; Death Penalty or Life Imprisonment.* Any person who commits murder in the first degree, or who causes the death of another by wilfully placing any obstruction upon any railroad or by loosening, taking up or removing any part of the superstructure of such railroad or by wilfully burning any building or vessel, shall suffer death unless the jury, by its verdict and as a part thereof, upon and after a consideration of all the evidence, recommends imprisonment in the State Prison for life, in which case the sentence of the court shall be imprisonment for life without benefit of release as provided in sections 18-7, 18-26 and 54-125, provided, if the person accused elects to be tried by the court and is found guilty or if such person is convicted by confession, the court may, in its discretion, imprison such person in the [illegible] Prison for life without the benefit of release as provided in sections 18-7, 18-26 and 54-125. (1949 Rev., S. 8351; 1951, S. 3266d; 1957 P. A. 461, S. 3.)

Sec. 54-45. *When Grand Jury Is Required.* The superior court may, when necessary, order a grand jury of eighteen electors of the county where said court is sitting to be summoned, impaneled and sworn to inquire after and present such

offenses as are cognizable by said court; and no person shall be put to plea or held to trial for any crime the punishment of which may be death or imprisonment for life unless an indictment has been found against him for such crime by a grand jury legally impaneled and sworn, and no bill shall be presented by any grand jury unless at least twelve of the jurors agree to it. (1949 Rev., S. 8747)